

AUG - 5 1993

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )  
Amendment of Part 90 of )  
the Commission's Rules to ) PR Docket No. 93-144  
Facilitate Future Development )  
of SMR Systems in the 800 MHz )  
Frequency Band )

To: The Commission

REPLY COMMENTS OF THE  
NATIONAL ASSOCIATION OF BUSINESS  
AND EDUCATIONAL RADIO

The National Association of Business and Educational Radio, Inc. ("NABER") pursuant to Section 1.415 of the Commission's Rules and Regulations, 47 C.F.R. Section 1.415 respectfully submits its Reply Comments in response to Comments filed by interested parties in response to the Notice of Proposed Rule Making ("Notice") adopted by the Commission in the above-styled proceeding.

REPLY COMMENTS

NABER filed Comments in the above proceeding in which it generally supported the proposed amendments of the Commission's Rules to facilitate the licensing of wide-area 800 MHz Specialized Mobile Radio systems ("SMR"). Although NABER supported the Commission's proposals in the proceeding to implement Expanded Mobile Service Provider ("EMSP") licensees, it was concerned that the Commission proceed so as not to adversely impact "smaller" SMR or ESMR operators currently operating in an area that did not wish to implement wide-area EMSP systems based upon especially large regions such as Metropolitan Trading Areas or Basic Trading Areas. Specifically, NABER proposed that the Commission eliminate its

No. of Copies rec'd  
List A B C D E

045

predefined areas for applying for EMSP licenses. The preferred mechanism suggested was to permit the applicant to define its required service area based on its existing customer base, amount of financial resources available to construct the wide-area systems and the future business plan of the licensee. NABER urged the Commission to permit the reuse of non-SMR frequencies and in particular the 150 General Category channels in an EMSP system. NABER also recommended coordination between adjacent co-channel EMSP licensees and that copies of such license applications be served on co-channel applicants.

A. The Commission Should Permit the Use of the 150 General Category Channels as Part of an EMSP.

NABER supported the inclusion and use of the 150 General Category Frequencies as part of an EMSP. This position was also fully supported in the Comments filed by Dial Page, Inc. and the American Mobile Telecommunications Association, Inc. ("AMTA"). As pointed out by NABER, SMR operators have used the General Category channels for which they are eligible as a means to expand their systems to serve customers where the SMR pool frequencies have been previously assigned. This has been a result of the growth and use of SMR frequencies throughout the United States and the Commission should include such frequencies within the eligibility for EMSP licenses. Further, to the extent non-category or non-SMR pool channels are included and actually used in an EMSP licensee's system, those channels should be included to

the extent they were already constructed and being used by the applicant.

B. Wide Area SMR Authorizations.

Although the majority of Comments supported a MTA<sup>1</sup> or BTA<sup>2</sup> market definition, NABER reiterates its concern that at 800 MHz, the Commission recognizes that there are a number of existing operators who may not wish to expand their systems to the extent or size of the MTA or BTA regions as suggested by the Commission. As recognized in the Comments submitted by the E.F. Johnson Company<sup>3</sup>, the Commission should recognize the actual market forces that have helped shape the SMR industry and not artificially make channels unavailable in many markets throughout the country.

NABER is also concerned as to how the licensing selection process will work in coordinating certain co-channel issues. Specifically, the Commission needs to resolve how channels are to be assigned as well as co-channel issues resolved in an MTA which includes both "USA" and off-set (i.e. Mexican border) frequencies.

C. The Commission Should Not Impose Restrictions on the Transfer of EMSP Licenses.

NABER supports the position of Dial Page, Inc., AMTA and Fleet Call, Inc. with respect to modification of the

---

<sup>1</sup> See, e.g. Comments of Fleet Call, Inc., American Mobile Telecommunications Association, Inc. ("AMTA") and Dial Page, Inc.

<sup>2</sup> See, e.g. Comments of Pactel Paging

<sup>3</sup> E.F. Johnson Company, Comments at pp. 3-5

Commission's restrictions on the assignment for at least three (3) years of EMSP licenses and in no case prior to completion of construction. Similar to the views expressed by Dial Page, NABER fully recognizes the Commission's efforts to dissuade trafficking of Commission licenses, however, on the whole most EMSP licenses at 800 MHz will involve underlying analog systems which have already been constructed and therefore the Commission should recognize the necessity to allow existing economic forces to take place and to allow financing transactions in the normal course of business. Specifically, NABER does not support limitations which would impede the ability of the EMSP licensee to undertake legitimate financial transactions which may result in the need for an assignment of the license or a transfer of control particularly upon seeking necessary financing to implement the size and scope of the systems involved. An anti-trafficking limitation placed upon existing EMSP licensees who may seek to expand their systems using wide-area digital operations would artificially restrict their ability construct their systems and to compete with other telecommunication companies in order to provide the public with competitive mobile service offerings.

D. EMSP Eligibility Criteria.

NABER agrees with the Commission's proposal in the NPRM to adopt a two stage acceptance and processing approach for EMSP systems. This approach recognizes that at 800 MHz there has been substantial build-out of systems throughout the country and those systems which were constructed and in existence as of the May

13, 1993 date should be permitted the first opportunity to file for reuse of their frequencies as a wide-area filing throughout the defined geographic area. Although several parties commenting opposed the Commission's preference on initial eligibility and its proposed two-step approach for EMSP licenses,<sup>4</sup> NABER does not believe that, at least as far as 800 MHz, this should be an issue. Substantial investment has already been made by 800 MHz SMR operators in significant areas of the country. Those operators should be given the first reasonable opportunity to expand the natural coverage areas of their systems and to be able to reuse their frequencies throughout their system's configuration. Further, applicants which were in the process of preparing wide-area conversion applications for existing systems when the Commission's NPRM was issued and had not filed by the date of the adoption of the EMSP rules should not be disadvantaged by permitting new entrants to eliminate the ability of such existing operators to offer EMSP service.

E. Regulatory Parity.

NABER will not address in detail the Comments submitted by a number of parties raising statutory and regulatory issues pertaining to the implementation of EMSP systems<sup>5</sup>. Those parties raised issues of regulation parity with common carrier

---

<sup>4</sup> See Comments of Pactel Paging and Southwestern Bell Corporation

<sup>5</sup> See Comments of Southwestern Bell Corporation, GTE Service Corporation and Bell Atlantic Enterprises International, Inc.

systems as well as raising issues as to current restrictions on the licensing of wire line common carriers. NABER believes that these issues are more appropriate as the subject of the pending legislation now before the Congress addressed in the Communications Licensing and Spectrum Allocation/Improvement Act or subjects for further rule making by the Commission.

**CONCLUSION**

WHEREFORE, THE PREMISES CONSIDERED, the National Association of Business and Educational Radio, Inc. hereby respectfully requests the Federal Communications Commission to take action in this proceeding consistent with the comments hereto.

Respectfully submitted,

NATIONAL ASSOCIATION OF BUSINESS AND  
EDUCATIONAL RADIO, INC.

By: 

David E. Weisman, Esquire  
Alan S. Tilles, Esquire

Its Attorneys

Meyer, Faller, Weisman and  
Rosenberg, P.C.  
4400 Jenifer Street, N.W.  
Suite 380  
Washington, D.C. 20015  
(202) 362-1100

Dated: August 5, 1993

sl\agmnts\Comment8.5